IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10020 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMAD KARIM SURANI

Versus

PORT OFFICER

Appearance:

1. Special Civil Application No. 10020 of 2004

MR TR MISHRA for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/12/2004

ORAL JUDGEMENT

Rule. Learned advocate Ms.Mandavia waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing

for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner complains that the Industrial Tribunal, Rajkot ought to have granted resinstatement to the petitioner by allowing Ex.5 application filed by the petitioner.

3. Facts which are not in dispute are that the petitioner-workman had raised an industrial dispute before the Industrial Tribunal, Rajkot which dispute being reference (IT) No.341/2000 was pending before the Industrial Tribunal. During the pendency of this dispute, pursuant to the departmental inquiry, services of the petitioner came to be terminated by an order dated 5.2.03. Challenging the said order dated 5.2.03, being in violation of section 33 of the Industrial Disputes Act, the petitioner herein filed Complaint No.25/03 in Reference No.341/2000 before the Industrial Tribunal, Rajkot. It was primarily contended that the services of the petitioner have been dispensed with pursuant to the order dated 5.2.03 without obtaining any approval from the Industrial Tribunal before which the reference of the petitioner was pending. It was, therefore, contended that since no approval application is filed and since no approval is obtained, the action of the respondent in terminating the services of the petitioner was ex-facie illegal and in contravention of the provisions of section 33(2)(b) of the Industrial Disputes Act. Along with the complaint application, the petitioner also field an application for interim relief.

4. The application for interim relief filed by the petitioner came to be rejected by the impugned order dated 8.4.04. The Industrial Tribunal was of the opinion that allowing that application would amount to allowing the pending reference and that therefore such a prayer cannot be granted as an interim measure. The Tribunal has found that there is no prima facie case in favour of the petitioner.

5. Appearing for the petitioner, learned counsel Shri T.R.Mishra has placed reliance on the decisions of Hon'ble Supreme Court in the case of J.Z.S.B.V. Bank v. Shri Ram Gopal Sharma, 2002 (92) FLR 667 and in the case of T.N.S.T. Corpn. v. Neethivilangan, 2002 (92) FLR 555 and submitted that the Industrial Tribunal ought to have granted the application of the petitioner since admittedly no approval was sought for and obtained by the respondent.

6. Appearing for the respondent, Ms.Mandavia submits that the complaint application filed by the petitioner is pending before the Industrial Tribunal and the Tribunal may be directed to dispose of the same expeditiously.

7. While accepting the request of the counsel for the respondent to expedite the complaint application pending before the Industrial Tribunal, I am of the opinion that the petitioner should be reinstated in service in the meantime. Since the main complaint application is pending, any observation by me in this order may have some repercussions on the said pending application, at the request of the learned advocate for the respondent, I refrain from giving reasons for the direction.

8. In the result, the petition is partially allowed. The respondent shall reinstate the petitioner in service within a period of two weeks from today. The Industrial Tribunal, Rajkot, is requested to take up the complaint application No.25/03 of the petitioner for early hearing and ensure disposal of the same as expeditiously as possible preferably within twelve weeks from the date of receipt of this order. I am sure, the Tribunal will decide the application without being influenced by the observations made in the order dated 8.4.04 since the same was passed at an interlocutory stage. Rule is made absolute to the aforesaid extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)